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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No.

SOLOMON STEINER,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITION FOR A WRIT OF CERTIORARI

The above-named petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in the above-entitled cause on March 29, 1972.

THE OPINION BELOW

The Court decided the case without rendering an opinion, in accordance with its local Rule 13(c). In the Court's judgment, the decision of the Tax Court appealed from was affirmed per curiam on March 29, 1972 (A. 21a).

JURISDICTION

(i) Date of Judgment and Date Entered. The judgment was entered in the United States Court of Appeals for the District of Columbia on March 29, 1972, and no rehearing was requested. The judgment of the Court of Appeals entered on March 29, 1972, is printed in the appendix, page 21a. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

(ii) No Rehearing Requested. The judgment of the Court of Appeals entered on March 28, 1972, is printed in the Appendix at page 21a.

(iii) Statutory Provision. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254 (1).

QUESTIONS PRESENTED

1. Did the respondent have the legal authority to assess a self-employment tax upon petitioner for the calendar year 1966 when appellant had more than 40 quarters of Social Security coverage prior thereto?

2. Does the assessment and collection of self-employment tax from appellant for the calendar year 1966 constitute the unlawful taking of his property and deprive him of due process of law in violation of the Fifth Amendment to the United States Constitution?

REASONS FOR CERTIORARI

This is a case of first impression in the lower courts and also in this Court, and petitioner urges this Court to take jurisdiction to decide the federal question of whether or not the assessment and collection of a self-employment tax from the petitioner after he admittedly had the status of a fully insured individual under the Social Security Act, thus was unlawfully taking the petitioner's property and depriving him of due process of law in violation of the Fifth Amendment to the United States Constitution.

This case is of far-reaching significance as it brings before this Court for the first time the issue of whether or not the assessment and collection of a self-employment tax from the petitioner by the Commissioner of Internal Revenue after the petitioner had attained the status of a fully insured individual under the Social Security Act constitutes the taking of his property without due process of law and deprives him of due process of law in contravention of the Fifth Amendment to the United States Constitution.

The maximum requirement of forty quarters of coverage for a "fully insured individual" has its origin in the Social Security Act Amendments of 1939 (53 Stat. 1360).

The House bill had a provision for maximum coverage of fifteen years. The Senate proposed a maximum of forty-quarter years. And this was approved by the Ways and Means Committee of the House and the Finance Committee of the Senate.

The Finance Committee of the Senate, in its report to accompany H.R. 6635 (Senate Report 734 Calendar No. 793, 76th Congress, 1st Session, P. 14), stated as follows:

In substance, the definition of a "currently insured individual" in the bill passed by the House, is one who has earned $50.00 in one half of the twelve calendar quarters preceding his death. Your committee does not propose to make a change in this definition of a "currently insured individual." They do recommend, however, that the definition of a "fully insured individual" which is now expressed in terms of calendar years be expressed in terms of calendar quarters instead. The definition of a "fully insured individual" suggested by your committee is in substance as follows: An individual who has earned at least $50.00 in each of one-half of the calendar quarters elapsing since December 31, 1936 (or since he became 21 years of age if later), and the date when he died or became 65 years of age. A minimum of six quarters and a maximum of 40 quarters of such earnings would be required. Your committee believes that this change from calendar years to calendar quarters in the definition more effectively establishes the individual's paid participation in insured employment and consequently eliminates the necessity for a requirement as to aggregate earnings as contained in the bill passed by the House. Your committee also believe that it warrants a change in the maximum period of time in insured employment as in the House to 40 quarters.

The change suggested above would not only have the advantage of using a calendar quarter in defining both a "fully insured individual" and a "currently insured individual," but would have two added advantages. It would enable a person who had reached age 65 and just missed qualifying, to qualify by earning an additional $50.00 in a subse-

quent quarter instead of an additional $200.00 in a subsequent year. . . .

The foregoing was designated in the law as Sec. 209(g) of the Social Security Act Amendments of 1939. This provision was retained in the Social Security Act Amendments of 1950 and was designated as Sec. 214 (64 Stat. 505) and which was subsequently retained in the law to date.

The term "quarter" and the term "calendar quarter" means a period of three calendar months ending on March 31, June 30, September 30 or December 31 [Sec. 213(a)(1)].

The term "quarter of coverage" means a quarter in which the individual has been paid $50.00 or more in wages or for which he has been credited with a $100.00 or more of self-employment income (Sec. 213(a)(2)].

Subsequently the 81st Congress passed the 1950 Amendments to the Social Security Act (64 Stat. 505). Sec. 212 of this amendment states:

> For the purposes of determining average monthly wage and quarters of coverage the amount of self employment income derived during any taxable year shall be credited to calendar quarters as follows:
>
> (a) In the case of a taxable year which is a calendar year the self employment income of such taxable year shall be credited equally to each quarter of such taxable year.

The legislative intent and the tenor of the Social Security Act (Sec. 214) clearly indicates a maximum requirement of 40 quarters of coverage.

If it were not so intended by the Congress, then Congress would not have made provisions for exemp-

tions and waivers. Thus an individual can work for forty quarters or ten years at the beginning of his working life and for the remaining years take employment in exempt employment as set forth in Sec. 210 of the Social Security Act and Sec. 3121 of the Internal Revenue Code and the exemption of which was not waived under Sec. 3121(k)(1) of the Internal Revenue Code, would also get the full benefits.

CONCLUSION

Appellant submits there is no legal basis for the assessment and collection of a self-employment tax from him for the calendar year 1966 and to permit such would be confiscatory; would constitute the taking of his property illegally and without due process of law, all in violation of Amendment V of the United States Constitution. Petitioner believes the writ of certiorari should be granted.

Respectfully submitted,

J. BENJAMIN SIMMONS
850 Sligo Avenue
Suite 200
Silver Spring, Md. 20910
Attorney for Petitioner

APPENDIX

TAX COURT OF THE UNITED STATES

SOLOMON STEINER, Petitioner,	:	
v.	:	Docket No. 3774-67
COMMISSIONER OF INTERNAL REVENUE, Respondent.	:	

PETITION

The above named Petitioner hereby petitions for a redetermination of the deficiencies set forth by the Respondent in his notice dated June 15, 1967, a copy of which is hereto attached and marked "Exhibit A" (front and reverse), and as a basis of his proceedings, alleges as follows:

I.

The Petitioner is a citizen of the United States, and a resident of the District of Columbia. The return for the period here involved was filed with the Director of Internal Revenue, at Baltimore, Maryland.

II.

The notice of the deficiency is dated June 15, 1967.

III.

The tax in controversy is a deficiency in self employment tax for the calendar year 1966 in the amount of $338.68 and a penalty in the amount of $19.73.

IV.

The determination of the tax and penalty in the said notice of deficiency is based upon the following errors:

1. The Commissioner of Internal Revenue erred in asserting a deficiency of self employment tax.

2. The Commissioner of Internal Revenue erred in asserting a penalty.

V.

The facts upon which the Petitioner relies as a basis of this proceeding are as follows:

1. The Petitioner is self employed. For the calendar years 1954 to 1965, inclusive, he has accumulated 48 quarters of coverage, which is already eight quarters in excess of the maximum requirement.

2. The return for 1966 was filed within the time limit allowed by the Director of Internal Revenue.

3. The notice, of which a copy is attached, is the only one which the Petitioner received.

WHEREFORE, the Petitioner prays that this Court may hear the proceedings and

1. Determine that the Commissioner of Internal Revenue erred in asserting a tax on self employment

income when the Petitioner had already accumulated the maximum forty quarters.

2. Determine that the Commissioner of Internal Revenue erred in asserting a penalty, when the return was filed within the time allowed by the Director of Internal Revenue.

3. Grant such other and further relief as the Court may deem proper.

/s/ Solomon Steiner

District of Columbia)ss:

Solomon Steiner, being duly sworn, says that he has read the foregoing petition, and is familiar with the statements contained therein, and that the statements contained therein are true.

/s/ Solomon Steiner

[Seal] Subscribed and sworn to before me this 21st day of July, 1967.

/s/ Delores Dola
Notary Public

EXHIBIT 'A' (Front)

US Treasury Department — Internal Revenue Service

DATE OF THIS NOTICE: JUNE 29, 1967

722-

If you inquire about your account, please refer to the numbers below			
Social Security Number	Document Locator Number	Form Number	Period Ended
578-34-3859	92222-134-00423-7	1040	DEC. 31, 1966

11

SOLOMON STEINER
5819 CHILLUM PL NE
WASHINGTON DC 20011

30 6612 670
5220

NOTICE OF TAX DUE

EXAMINATION OF YOUR RETURN DISCLOSED THAT THE COMPUTATION ON YOUR FEDERAL INCOME TAX RETURN REVEALED AN ERROR. THE CORRECT AMOUNT OF YOUR BALANCE DUE IS SHOWN IN THE COLUMN TO THE RIGHT.

THE CHANGES OR CHANGES ARE IDENTIFIED BY THE CODE LETTER(S) SHOWN IN THE BOX BELOW. FOR AN EXPLANATION OF THE CHANGE(S), PLEASE LOOK ON THE BACK OF THIS NOTICE FOR THE SAME CODE LETTER(S).

A U T

	Total tax shown on return	$ 803.94
1.	Tax	1,144.62
2.	Tax withheld (—)	
3.	Estimated tax credits (—)	790.00
4.	Other credits (—)	
5.	Payments (—)	
6.	Penalty (+)	19.73
7.	Interest (+)	3.99
8.	BALANCE DUE → $	417.94
9.	Payment not shown	
10.	Current balance due	

THE BALANCE DUE MUST BE PAID IN FULL BY JUNE 29, 1967

PLEASE MAKE YOUR REMITTANCE PAYABLE TO INTERNAL REVENUE SERVICE AND MAIL A COPY OF THIS NOTICE TO THE DIRECTOR AT THE ADDRESS SHOWN ABOVE. THE DUPLICATE COPY IS FOR YOUR RECORDS.

IF you have made payments not included in the amount on line 8, enter the total amount of these payments on line 9. Subtract the amount from the BALANCE DUE on line 8 and enter the result on line 10. Please return this notice with the amount due. If any, enter the missing payment information requested on the back of the copy.

IMPORTANT: IS ONLY THE RESULT OF AN AUDIT OF YOUR RETURN. IF YOUR RETURN SHOULD BE EXAMINED FOR AUDIT, YOU WILL RECEIVE A SEPARATE NOTICE.

If this statement is otherwise in error, please explain why an adjustment to your account should be made, and return this notice with your explanation.

PLEASE RETURN THIS COPY

FORM 4506 (REV. 10-

Codes and Explanations

A [illegible]

B [illegible]

C The proper FICA (social security, employee tax deducted as a credit on your return is in error. The amount allowable as a credit is the amount of FICA taxes [illegible] shown in Box 4 of Form W-2. The credit on the Line 64 of your return is the actual FICA deducted by [illegible] shown on Form W-2 or Forms W-2 if more than one. If the amount overstated was due to [illegible] you should refund it and file an amended return.

D Error in computation of the income or loss shown on Page 1 as "OTHER INCOME."

E Error in computation of total income.

F Error in computation of adjustments.

G Error in computation of allowable medical or dental expenses.

H Error in addition of itemized deductions or in carryover to the total to Page 2.

I Error in the amount of standard deduction allowable.

J Error in computation of exemptions from Page one.

K Tax taken from wrong column of wrong line of the Table or incorrectly computed from the table amounts.

L Error in determining either the number of exemptions or in computing exemption amount.

M Your computation agrees with your return but does not agree with the number you used in computing your tax.

N Joint computation used, but return [illegible] that you will be [illegible] by filing a separate return.

O Error in computation of net investment tax or [illegible] the amount to Page 1.

P Error in computation of dividends, [illegible] credit, retirement income credit, investment credit, gain on sale of low-income [illegible]

Q Error in addition of total credits.

R Prior period penalty assessed for failure to pay tax.

S You figured your balance due or overpayment incorrectly.

T Error in prepaid interest as withheld tax payments and credits.

U Interest computed at the rate of 6% a year on balance due from due date of return to date of payment or date of this notice.

Penalty assessed for late filing of this return 5% for each month or fraction thereof to a maximum of 25%. Internal Revenue does not [illegible] penalty if you have reasonable cause. If you believe you had such reasonable cause and wish us to so consider, the penalty assessed, a [illegible] explanation should be sent to us within 15 days from the date of this statement.

V Error in addition of [illegible]

W The balance may be a [illegible]

PAYMENT	CHECK	AMOUNT $	[illegible] BANK, PLACE [illegible]	[illegible] NUMBER SIGNATURE CHECK BY DIRECTOR	[illegible] DIRECTOR'S ENDORSEMENT DATE
		DATE OF PAYMENT	LOCATION OF [illegible] REGIONAL REVERSAL OFFICE WHICH ENDORSED CHECK		
	MONEY ORDER	AMOUNT $	[illegible] [ ] U.S. POSTAL [ ] EXPRESS [ ] OTHER (Specify)		
		DATE OF PURCHASE	[illegible] NUMBER OF MONEY ORDER RECEIVED	ISSUING STATION (NAME AND ADDRESS)	
	CASH	AMOUNT $	DATE OF CASHIER'S RECEIPT	NUMBER OF [illegible]	

[illegible]

EXHIBIT A [illegible]

ANSWER

THE RESPONDENT, in answer to the petition filed in the above-entitled case, admits and denies as follows:

I, II, and III. Admits the allegations contained in paragraphs I, II and I II of the petition.

IV. Denies that the Commissioner erred as alleged in paragraph IV of the petition.

V. Denies the allegations contained in paragraph V of the petition.

VI. Denies generally each and every allegation of the petition not hereinbefore specifically admitted, qualified or denied.

WHEREFORE, it is prayed that the deficiency determined by the respondent be in all respects approved.

/s/ Lester R. Uretz
Chief Counsel
Internal Revenue Service

Of Counsel:

Cecil H. Haas
Regional Counsel

William Morris
Attorney
Internal Revenue Service

STIPULATION OF FACTS

It is hereby stipulated that, for the purpose of this case, the following statements may be accepted as facts and all exhibits referred to herein and attached hereto are incorporated in this stipulation and made a part thereof; provided, however, that either party has the right to object to the admission of such facts and exhibits in evidence on the grounds of materiality and relevancy; further provided that either party may introduce other and further evidence not inconsistent with the facts and exhibits herein stipulated:

1. The petitioner is an individual who presently resides at, and who at the time of the filing of the petition in this case resided at, 5215 Chillum Place, N.E., Washington, D.C. 20011. Petitioner, Solomon Steiner, filed his 1966 individual Federal income tax return with the District Director of Internal Revenue, Baltimore, Maryland. A copy of the above-mentioned return is attached hereto and made a part hereof as Exhibit 1-A.

2. Attached to and made a part of petitioner's tax return was Schedule C on which petitioner disclosed a net profit in excess of $400.00 from his business activity as an accountant. Also attached was Schedule C-3, providing for computation of self-employment tax, left blank. Copies of these attachments are included in Exhibit A, attached hereto.

3. Petitioner was born on May 7, 1906, in New York City, New York.

4. Prior to January 1, 1966, petitioner Solomon Steiner, pursuant to the requirements of the "Self-Employment Contributions Act of 1954" and Sections 1401-1403 of the Internal Revenue Code of 1954, and in

connection with the filing of his Federal income tax returns computed and paid self-employment taxes to the United States far in excess of 40 consecutive quarters. As a result of such payments, petitioner now has the status of a "fully insured individual" under Section 414 of the Social Security Act as amended, U.S. Code 1964, Title 42 § 301 et seq.

/s/ Solomon Steiner
Petitioner

(signed) K. Martin Worthy
GJR
Chief Counsel
Internal Revenue Service

5222134 00423

Form **1040** U.S. Individual Income Tax Return for the year January 1–December 31, 1966, or other tax year beginning ..., 19.. ending ..., 19.. U.S. Treasury Department—Internal Revenue Service **19**

Please print or type

Your first name and initial (if joint return, also first name and middle initial of wife)	Last name	Your social security number (husband's, if joint return)
SOLOMON	STEINER	538 [illegible] 38 5
Home address (number and street or rural route)		Your occupation
5215 CHILLUM PL. NE		ACCT.
City, town or post office, and State	ZIP code	Wife's occupation, if joint return
WASHINGTON DC	2009	

Enter the name and address as shown on your return for 1965 if different from above. If joint return, give wife's name. If changing from separate to joint or from to separate returns, enter 1965 names and addresses. SAME — Date of death

Your present employer and address

Wife's present employer and address, if joint return

Filing Status—check only one:

1a ☐ Single

1b ☐ Married filing joint return (even if only one had income)

1c ☒ Married filing separately. If your husband or wife is also filing a return give his or her first name and social security number. PAULINE

1d ☐ Unmarried Head of Household

1e ☐ Surviving widow(er) with dependent child

Exemptions

	Regular	65 or over	Blind	
2a Yourself	☑	☐	☐	Enter number of exemptions checked ▶ 1
2b Wife	☐	☐	☐	

3a First names of your dependent children who lived with you

Enter number ▶

3b Number of other dependents (from page 2, Part I, line 3)

4 Total exemptions claimed ▶ 1

Income If joint return, include all income of both husband and wife	5	Wages, salaries, tips, etc. If not shown on attached Forms W-2 attach explanation ▶	None
	6	Other income (from page 2, Part II, line 8)	627 —
	7	Total (add lines 5 and 6)	627 —
	8	Adjustments (from page 2, Part III, line 5) RECEIVED	None
	9	Total income (subtract line 8 from line 7)	627 —
Figure tax by using either 10 or 11	10	Tax Table—If you do not itemize deductions and line 9 is less than $5,000, find your tax from tables in instructions. Do not use lines 11a, b, c, or d. Enter tax on line 12.	
	11	Tax Rate Schedule—	
Tax Computation	11a	If you itemize deductions, enter total from page 2, Part IV. If you do not itemize deductions, and line 9 is $5,000 or more enter the larger of: (1) 10 percent of line 9 or; (2) $200 ($100 if married and filing separate return) plus $100 for each exemption claimed on line 4, above. Deduction under (1) or (2) limited to $1,000 ($500 if married and filing separately). ▶	500 —
	11b	Subtract line 11a from line 9	127
	11c	Multiply total number of exemptions on line 4, above, by $600	600 —
	11d	Subtract line 11c from line 11b. Enter balance on this line. (Figure your tax on this amount by using tax rate schedule on page 11 of instructions.) Enter tax on line 12.	427 —
Tax Credits Payments	12	Tax (from other Tax Table, see line 10, or Tax Rate Schedule, see line 11)	805 94
	13	Total credits (from page 2, Part V, line 5)	None
	14a	Income tax (subtract line 13 from line 12)	805 94
	14b	Tax from recomputing prior year investment credit (attach statement)	None
	15	Self-employment tax (Schedule C-S or F-1)	None
	16	Total tax (add lines 14a, 14b, and 15)	805 94
	17	Total Federal income tax withheld (attach Forms W-2) 752 —	
	18	1966 Estimated tax payments (including overpayment allowed on return) ▶	
	19	Excess F.I.C.A. Tax Withheld (two or more employers—see page 5 of inst.) ▶	
	20	Nonhighway Federal gasoline tax—Form 4136, Reg. tax—Form 2439	
	21	Total (add lines 17, 18, 19, and 20)	752 —
Tax Due or Refund	22	If payments (line 21) are less than tax (line 16), enter Balance Due. Pay in full with this return	53 94
	23	If payments (line 21) are larger than tax (line 16), enter Overpayment ▶	
		Amount of line 23 you wish credited to 1967 Estimated Tax	
		Subtract line 24 from 23. Apply to: U.S. Treasury and will receive refunds or ☐ Refund only	

Sign here ▶ [signature] Date 5/6/67

If joint return, BOTH HUSBAND AND WIFE MUST SIGN even if only one had income.

Paid preparer's signature and address Date

Preparer other than Employer

Extension form 2688 attached

Attach Copy B of Form W-2 here ▶

Attach Check or Money Order here ▶

POOR COPY

PART I. Exemptions Complete only for dependents claimed on line 6 on page 1 — Form 1040—1986—Page 2

(a) Name(s). (If more than 4 dependents, attach schedule)	(b) Relationship	(c) Number of months lived in your home in 1986	(d) Did dependent have income of $1,000 or more?	(e) If 1986 U.S. tax was withheld from dependent's income, enter amount withheld	(f) Did you provide over half of dependent's support in 1986?
1				$	$
2					

3 Total number of dependents listed above. Enter here and on page 1, line 5b . . . . . ▶▶

PART II. Income from sources other than wages, etc.

1a Dividends and other distributions on stock (Name of payer—wife (W), (H), (J), for stock held by husband, wife, or jointly)

Fidelity Equity-Income	30 —
Total line 1a . . . . . ▶▶	30 —
1b Exclusion (see instructions) 100 —	
1c Capital gain distributions .	
1d Nontaxable distributions .	100 —
1e Total lines 1b, 1c, and 1d	
1f Taxable dividends (line 1a less line 1e—not less than zero) . . . . . ▶▶	none

2 Interest (name of payer)
2a Earnings from savings and loan assoc., mutual savings banks, credit unions, etc.

Irving Bank	120
Total line 2a 120 —	
2b Interest on bank deposits (other than mutual savings)	
Total line 2b	
2c Other interest (bonds, etc.)	
Total line 2c	120 —
2d Total interest income (lines 2a, 2b, & 2c) ▶▶	120 —

3 Pensions and annuities, rents and royalties, partnerships, estates or trusts, etc. (Sch. E)	
4 Business income (Schedule C)	1507 —
5 Sale or exchange of property (Schedule D).	
6 Farm income (Schedule F)	
7 Miscellaneous income (state nature)	
Total line 7 ▶▶	
8 TOTAL (add lines 1f through 7. Enter here and on page 1, line 8) . . . . . ▶▶	1627 —

PART III. Adjustments

1 "Sick pay" if included in line 5, page 1 (attach Form 2440 or other required statement) .	
2 Moving expenses (attach Form 3903) . .	
3 Employee business expense (attach Form 2106 or other statement)	
4 Payments by self-employed persons to retirement plans, etc (attach Form 2950SE) .	
5 TOTAL ADJUSTMENTS (lines 1 through 4). Enter here and on page 1, line 8 . . .	

EXPENSE ACCOUNT INFORMATION—If you had an expense allowance or charged expenses to your employer, check here ☐ and see page 7 of instr. Item

PART IV. Itemized deductions—Use only if you do not use the table or standard deduction.

Medical and dental expense (not compensated by insurance or otherwise)—Attach itemized list. If 65 or over see instructions.

1 Total cost of medicine and drugs . . .	
2 Enter 1% of line 9, page 1	
3 Subtract line 2 from line 1	
4 Other medical, dental expenses (include hospital insurance premiums)	
5 Total (add lines 3 and 4)	
6 Enter 3% of line 9, page 1	
7 Subtract line 6 from line 5; see page 8 of instructions for maximum limitation ▶▶	

Contributions.—Cash—including checks, money orders, etc. (itemize)

1 Total cash contributions	
2 Other than cash (see instructions for required statement). Enter total of such items here.	
3 Carryover from prior years (see page 8 of inst.)	
4 Total contributions (add lines 1, 2, and 3—see instructions for limitation) . . ▶▶	

Taxes.—Real estate . . . . . | |
State and local gasoline . . . . . | |
General sales (see page 15 of instructions) . | |
State and local income . . . . . | |
Personal property . . . . . | |
Total taxes ▶▶ | |

Interest expense.—Home Mortgage . . . . | |
Other (itemize) | |
Total interest expense ▶▶ | |

Miscellaneous deductions.—(see page 9 of instructions) | |
Total Miscellaneous ▶▶ | |
TOTAL DEDUCTIONS (for page 1, line 11a) ▶ | |

PART V. Credits

1 Retirement income credit (Schedule R) .	
2 Investment credit (Form 3468)	
3 Foreign tax credit (Form 1116)	
4 Tax-free covenant bonds credit	
5 TOTAL CREDITS (add lines 1 through 4). Enter here and on page 1, line 13 .	

SCHEDULE C (Form 1040)
U.S. Treasury Department
Internal Revenue Service

Profit (or Loss) From Business or Profession

(Sole Proprietorship)

(Compute social security self-employment tax on Schedule C-3 (Form 1040))

1983

Attach this schedule to your income tax return, Form 1040 — Partnerships, joint ventures, etc., must file on Form 1065

Name and address as shown on page 1, Form 1040

SOLOMON STEINER 5215 CHILLUM PL. NE DC 20011

A Principal business activity ACCOUNTANT product

(See separate instructions) (For example: retail—hardware; wholesale—tobacco; service—legal; manufacturing—furniture, etc.)

B Business name C Employer Identification Number

D Business location 5211 CHILLUM PL. NE DC 20011

(Number and street or rural route) (City or post office and State) (ZIP code)

E Indicate method of accounting: (1) ☒ cash; (2) ☐ accrual; (3) ☐ other.

1	Gross receipts or gross sales $ 7350 Less: Returns and allowances $	$ 7350	00
2	Inventory at beginning of year (if different than last year's closing inventory attach explanation)		
3	Merchandise purchased $ less cost of any items withdrawn from business for personal use $		
4	Cost of labor (do not include salary paid to yourself)		
5	Material and supplies		
6	Other costs (explain in Schedule C-1)		
7	Total of lines 2 through 6		
8	Inventory at end of this year		
9	Cost of goods sold (line 7 less line 8)		
10	Gross profit (subtract line 9 from line 1)	7350	00
	OTHER BUSINESS DEDUCTIONS		
11	Depreciation (explain in Schedule C-2)		
12	Taxes on business and business property (explain in Schedule C-1)	30 00	
13	Rent on business property		
14	Repairs (explain in Schedule C-1)		
15	Salaries and wages not included on line 4 (exclude any paid to yourself)		
16	Insurance		
17	Legal and professional fees		
18	Commissions		
19	Amortization (attach statement)		
20	Retirement plans, etc. (other than your share—see separate instructions)		
21	Interest on business indebtedness		
22	Bad debts arising from sales or services		
23	Losses of business property (attach statement)		
24	Depletion of mines, oil and gas wells, timber, etc. (attach schedule)		
25	Other business expenses (explain in Schedule C-1)	1813 00	
26	Total of lines 11 through 25	1843	00
27	Net profit (or loss) (subtract line 26 from line 10). Enter here; in Schedule C-3, line 1; and on page 2, Part II, line 4, Form 1040	5507	—

SCHEDULE C-1. EXPLANATION OF LINES 6, 12, 14, AND 25

Line No.	Explanation	Amount	Line No.	Explanation	Amount
	CC4 Annual Fee	$ 450 00		Purchase Property	$ 30 00
	Business Liens	450 00			
	Telephone Answering Serv	318 00			
	Supplies	240 00			
	Stat. Postage Supplies	105 00			
	Office Expense	120 00			
	Subscriptions/Reference	310 00			
	Licenses/Dues	70 00			
		1843 00			

SCHEDULE C-2. EXPLANATION OF DEDUCTION FOR DEPRECIATION CLAIMED ON LINE 11

This schedule is designed for taxpayers using the alternative guidelines and administrative procedures described in Revenue Procedures 62-21 and 65-13 as well as for those taxpayers who wish to continue using practices authorized prior to these revenue procedures. Where double headings appear use the first heading for depreciation under Revenue Procedures 62-21 and 65-13 and the second heading for other authorized practices.

1. Description of property	2. Cost or other basis at beginning of year — Cost or other basis	3. Accumulated depreciation (amount) — Date acquired	4. Depreciation allowed or allowable in prior years	5. Method of computing depreciation	6. Life or rate — Rate (%) or life	7. Depreciation for this year
1 Total additional first-year depreciation (do not include in items below)						
2 Totals						
3 Less: Amount of depreciation claimed elsewhere in Schedule C						
4 Balance—Enter here and on page 1, line 11						

SUMMARY OF DEPRECIATION

	Straight line	Declining balance	Sum of the years-digits	Units of production	Additional first year (section 179)	Other (specify)	Total
1 Under Rev. Proc. 62-21							
2 Other							

EXPENSE ACCOUNT INFORMATION

Enter information with regard to yourself and your five highest paid employees. In determining the five highest paid employees, expense account allowances must be added to their salaries and wages. However, the information need not be submitted for any employee for whom the combined amount is less than $10,000, or for yourself if your expense account allowance plus line 27, page 1, is less than $10,000. See separate instructions for Schedule C, for definition of "expense account."

Name	Expense account	Salaries and wages
Owner		XXXXXXXXXXXX
1		
2		
3		
4		
5		

Did you claim a deduction for expenses connected with: (If answer to any question is "YES," check applicable boxes within that question.)

F A hunting lodge ☐, working ranch or farm ☐, fishing camp ☐, resort property ☐, pleasure boat or yacht ☐, or other similar facility ☐? (Other than where the operation of the facility was your principal business.) ☐ YES ☐ NO

G Vacations for you or members of your family, or employees or members of their families? (Other than vacation pay reported on Form W-2.) ☐ YES ☐ NO

H The leasing, renting, or ownership of a hotel room or suite ☐, apartment ☐, or other dwelling ☐, which was used by you, your customers, employees, or members of their families? (Other than use by yourself or employees while in business travel status.) ☐ YES ☐ NO

I The attendance of members of your family or your employees' families at conventions or business meetings? ☐ YES ☐ NO

ADDITIONAL INFORMATION

1 Was there any substantial change in the manner of determining quantities, costs, or valuations between the opening and closing inventories? ☐ YES ☐ NO. If "Yes," attach explanation.

2 Are you liable for filing Forms 1096 and 1099 or 1087 for the calendar year 1966? (See last paragraph of separate instructions for Schedule C.) ☐ YES ☐ NO. If "Yes," where were they filed? _____

SCHEDULE C-3 (Form 1040)
U.S. Treasury Department
Internal Revenue Service

Computation of Social Security Self-Employment Tax

Attach this schedule to your income tax return, Form 1040
See instructions on page 2

19[illegible]

► If you had wages, including tips, of $6,600 or more which were subject to social security taxes, do not fill in this page.
► Complete only one Schedule C-3 if you had more than one business, combine profits (or losses) from all of your businesses on this Schedule.
► Each self-employed person must file a separate schedule.

NAME AND ADDRESS as shown on page 1 of Form 1040)

NAME OF SELF-EMPLOYED PERSON (as shown on social security card)	Social Security Number

1	Net profit (or loss) shown in Schedule C (Form 1040), line 27 (Enter combined amount if more than one business)		
2	Add to net profit (or subtract from net loss) losses of business property shown in Schedule C, line 23		
3	Total (or difference)		
4	Net income (or loss) from excluded services or sources included on line 3		
	Specify excluded services or sources		
5	Net earnings (or loss) from self-employment—		
	(a) From business (line 3 less any amount on line 4)		
	(b) From partnerships, joint ventures, etc. (other than farming)		
	(c) From service as a minister, member of a religious order, or a Christian Science practitioner. Enter only if you have filed or are filing Form 2031		
	(d) From farming reported on line 2 (or line 3 if option used), separate Schedule F-1 (Form 1040)		
	(e) From service with a foreign government or international organization		
6	Total net earnings (or loss) from self-employment reported on line 5. Enter here and in item F below (If line 6 is under $400, you are not subject to self-employment tax. Do not fill in rest of page.)		
7	The largest amount of combined wages and self-employment earnings subject to social security tax is	$ 6,600 | 00	
8	(a) Total "F.I.C.A." wages as indicated on Form W-2		
	(b) Unreported tips, if any, subject to F.I.C.A. tax from Form 4137, line 9		
	(c) Total of lines 8(a) and 8(b). Enter here and in item G below		
9	Balance (line 7 less line 8(c))		
10	Self-employment income—line 6 or 9, whichever is smaller. Enter here and in item H, below		
11	Self-employment tax—If line 10 is $6,600, enter $405.90; if less, multiply the amount on line 10 by 6.15%. Enter this amount here and on page 1, line 15, Form 1040		

Do not detach

[illegible]

Form 2688 (Rev. Dec. 1960)

U.S. Treasury Department—Internal Revenue Service

APPLICATION FOR EXTENSION OF TIME TO FILE
U.S. Individual Income Tax Return

Must be filed by 12th day of 3rd month after the due date for filing the return.

Your Social Security Number: 574 74 1317

PLEASE PRINT OR TYPE

Name: [illegible]

Address: [illegible]

(See instructions for filing instructions and return address)

RECEIVED APR 18 1961

1. An extension of time until June 15, 1961 is hereby granted in which to file the individual income tax return (Form 1040) of the taxpayer named above for the calendar year 19 61 or other taxable year beginning ..... and ending .....

2. State *in detail* the reason the extension is needed (see instruction 3 on reverse side): To begin does not have sufficient information to prepare complete return

3. Did you file an individual income tax return on time (including any authorized extension) for each of the 3 years immediately preceding the year for which this extension is requested? ☑ Yes ☐ No

If "NO," list each year during the 3-year period for which a return was not filed on time or within a period covered by an extension, and state the reason.

4. Were you required to file a declaration of estimated tax for the year for which this extension is requested? ☐ Yes ☐ No. If "YES," was each required installment payment made on or before its due date? ☐ Yes ☐ No

SIGNATURE AND VERIFICATION:

IF PREPARED BY TAXPAYER

Under penalties of perjury, I declare that to the best of my knowledge and belief, the statements made herein are true and correct.

Signature of taxpayer Solomon Stone Date 4/17/61

IF PREPARED BY SOMEONE OTHER THAN TAXPAYER

Under penalties of perjury, I declare that to the best of my knowledge and belief, the statements made herein are true and correct, that I am authorized by the taxpayer to prepare this application, and that I am:

☐ A member in good standing of the bar of the highest court of (specify jurisdiction) .....

☐ A certified public accountant duly qualified to practice in (specify jurisdiction) .....

☐ A person enrolled to practice before the Internal Revenue Service.

☐ A duly authorized agent holding a power of attorney. (The power of attorney need not be submitted unless requested.)

☐ A person standing in close personal or business relationship to the taxpayer who is unable to sign this application because of [illegible], absence, or other good cause. My relationship to the taxpayer and the reasons why the taxpayer is unable to sign the application are .....

Signature of preparer other than taxpayer ..... Date .....

THE INTERNAL REVENUE SERVICE WILL INDICATE BELOW WHETHER THE EXTENSION IS GRANTED OR DENIED AND WILL RETURN THE ORIGINAL OF THIS APPLICATION TO YOU.

NOTICE TO APPLICANT—TO BE COMPLETED BY THE DISTRICT DIRECTOR

☐ Your application is approved. This form must be attached to your individual income tax return when filed as evidence that the extension was granted. INTEREST ACCRUES AT THE RATE OF 6 PERCENT PER YEAR ON ANY TAX DUE FOR THE YEAR FROM THE REGULAR DUE DATE OF THE RETURN UNTIL PAID.

☐ Your application cannot be considered since it was received in this office after the due date of the return. Your return should be filed without further delay. Please attach this form to the return to explain the delay in filing.

☑ Careful consideration has been given to the reasons and other data given in your application but it has been determined that the extension is not warranted. Your return should be filed by the regular due date or within 10 days of the date of the receipt of this notice, if the end of such 10-day period is later than the regular due date. The 10-day period granted shall constitute a valid extension of time in filing returns for purposes of elections required to be made on timely filed returns. Please attach this form to the return to explain the delay in filing.

☐ Other .....

APR 27 1961 Date

[illegible] District Director

POOR COPY

UNITED STATES TAX COURT

SOLOMON STEINER, Petitioner v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 5436-68. Filed March 18, 1971

Taxpayer did not compute or pay any self-employment tax in 1966 under sec. 1401, I.R.C. 1954, though he had self-employment income. Taxpayer claimed he was no longer subject to self-employment tax because he had computed and paid self-employment tax in excess of 40 consecutive quarters thus achieving the status of a "fully insured individual" as defined in 42 U.S.C., sec. 414(a)(2) (Social Security Act). *Held:* Taxpayer is still subject to self-employment tax.

J. Benjamin Simmons, for the petitioner.

William Morris and *Louis F. Nicharot,* for the respondent.

OPINION

TIETJENS, *Judge:* Respondent determined a deficiency of $338.68 in petitioner's Federal income tax for the year 1966. This deficiency arises by reason of respondent's determination that petitioner's net earnings from self-employment were subject to the tax on self-employment income imposed by section 1401 of the Internal Revenue Act.[1] No question is raised as to the amount or the character of the income involved. The only question for our consideration is whether petitioner

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[1] All subsequent statutory references are to the Internal Revenue Code of 1954, as amended, unless otherwise indicated.

is required to pay the self-employment tax imposed by virtue of section 1401 under the facts of the instant case.

All of the facts have been stipulated and are so found. The stipulation and the exhibits attached thereto are incorporated herein by this reference.

Petitioner, at all times pertinent herein, as been a resident of Washington, D.C. He filed a separate return for 1966, the taxable year in question, with the district director of internal revenue at Baltimore, Maryland.

Petitioner was a self-employed accountant during 1966, and his only income in that year stemmed from his accounting activities. Petitioner had $5,507.00 of self-employment income as that term is defined in section 1402(a)[2] and 1402(b)[3] and used in section 1401(a) and (b). Prior to 1966, petitioner, pursuant to section 1401, had computed and paid a self-employment tax for in excess of 40 consecutive quarters,[4] thus achieving the status of a "fully insured individual" as defined in 42

[2] SEC. 1402. DEFINITIONS.

(a) Net Earnings from Self-Employment.–The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, * * *.

[3] SEC. 1402(b). Self-Employment Income.–The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual) during any taxable year; * * *.

[4] 42 U.S.C. Sec. 413(a)(1) of the Social Security Act defines "quarter" as a period of 3 calendar months ending on March 31, June 30, September 30, and December 31.

Section 413(a)(2) of the same Act defines a "quarter of coverage" as one in which an individual has been credited with $100.00 or more of self-employment income.

U.S.C. Sec. 414(a)(2). [5] In his income tax return for 1966, petitioner did not compute, nor did he pay any self-employment tax under section 1401. Respondent, in his notice of deficiency, computed the tax due under section 1401, and determined a deficiency of $338.68 (6.15% x $5,507).[6]

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[5] SEC. 414. INSURED STATUS FOR PURPOSES OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS.

For the purposes of this subchapter–

(a) The term "fully insured individual" means any individual who had not less than–

* * * * *

(2) 40 quarters of coverage; * * *.

[6] SEC. 1401(a). Old-Age, Survivors, and Disability Insurance.–In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax as follows:

(1) in the case of any taxable year beginning after December 31, 1965, and before January 1, 1967, the tax shall be equal to 5.8 percent of the amount of the self-employment income for such taxable year;

* * * * *

(b) Hospital Insurance.–In addition to the tax imposed by the preceding subsection, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax as follows:

(1) in the case of any taxable year beginning after December 31, 1965, and before January 1, 1967, the tax shall be equal to 0.35 percent of the amount of the self-employment income for such taxable year; * * *.

The sum of the percentages of 1401(a) and 1401(b), when added together, equals 6.15% as set forth in the body of the opinion.

Petitioner presents a novel argument based on a presumed correlation between entitlement to certain maximum benefits under Sec. 414 of the Social Security Act as amended (1964), 42 U.S.C. Sec. 301 et seq., and the liability for payment of self-employment taxes under section 1401. Petitioner is a "fully-insured individual" within the meaning of Sec. 414 of the Social Security Act, 42 U.S.C. Sec. 301 et seq., because he has over 40 quarters of coverage. Under Sec. 402, 42 U.S.C. Sec. 301, et seq., petitioner's rights to old-age and survivors insurance benefit payments are fully vested, and he need only reach the age of 62 (which, as of 1966, petitioner had not yet done, having been born in May of 1906) to begin receiving payments under the Act. Petitioner argues that since he has done all that is required in order to be eligible for the maximum benefits allowable under the Social Security Act, he need no longer pay the tax levied by virtue of section 1401. He further contends that to decide otherwise would be a confiscatory taking of property without due process of law, and in violation of his rights under the Fifth Amendment of the Constitution of the United States.

Petitioner's argument is without merit. It finds no support in any provision of the Internal Revenue Code, in any regulation of the Commissioner, in any Congressional report, or in any provision of the Constitution. See *Lewyt v. Commissioner*, 349 U.S. 237 (1955); *Cain v. United States*, 211 F.2d 375 (C.A. 5, 1954), cert. denied 347 U.S. 1013 (1954).

Decision will be entered for the respondent.

DECISION

Pursuant to the determination of the Court, as set forth in its Opinion, filed March 18, 1971, it is

ORDERED AND DECIDED: That here is a deficiency of $338.68 in petitioner's Federal income tax for the year 1966.

/s/ Norman O. Tietjens
Judge

ENTERED: June 16, 1971.

NOTICE OF FILING NOTICE OF APPEAL

TO: Mr. K. Martin Worthy
Chief Counsel
Internal Revenue Service

You are hereby notified that the Petitioner on June 15, 1971 filed with the Clerk of the United States Tax Court, at Washington, D.C., a Notice of Appeal to the United States Court of Appeals for the Dist. of Col. Circuit, of the decision(s) of the United States Tax Court entered in the above-entitled case(s).

Copy of the indicated document(s) as filed is hereto attached and served upon you.

/s/ Charles S. Casazza
Clerk of the Court

DATED: June 16, 1971.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT
SEPTEMBER TERM, 1971

[No Opinion]

No. 71-1574 Tax Court Docket No. 5436-68

[Filed: Mar. 29, 1972]

SOLOMON STEINER,

Appellant,

v.

COMMISSIONER OF
INTERNAL REVENUE,

Appellee,

Appeal from Decision of the Tax Court of the United States

Before: WRIGHT, TAMM and WILKEY, Circuit Judges.

JUDGMENT

This cause came on for consideration on the record on appeal from the Tax Court of the United States, and briefs were filed herein by the parites. While the issues presented occasion no need for an opinion, they have been accorded full consideration by the Court. *See* Local Rule 13(c). On consideration of the foregoing, it is

ORDERED AND ADJUDGED by this Court that the Decision of the Tax Court appealed from in this cause is hereby affirmed.

Per Curiam

For the Court:

/s/ Nathan J. Paulson
Clerk

Dated: March 29, 1972.